



AAA Southern California

May 2, 2007

Mr. Devinder Singh
Senior Transportation Engineer
Secretary -CTCDC, TDNPC
Caltrans - Office of Signs, Markings and Permits
Division of Traffic Operations

Subject: "Speed Limits" - Item 07-16; CTCDC Agenda for June 7, 2007 Meeting

Dear Mr. Singh:

I would like to request that you place this item on the agenda for the CTCDC meeting on June 7, 2007, and include this letter in the agenda package for members' review and consideration.

INTRODCUTION

In reply to the recent change in the California Manual on Uniform Traffic Control Devices (CA MUTCD) affecting the procedure for establishing posted speed limits using Engineering & Traffic Surveys (E&TS), Senator Ellen Corbett (D-San Leandro), this year, introduced Senate Bill 848, which later became a 2-year bill and will not be further considered in this legislative cycle. This bill was initially sponsored and supported by the Sheriffs Association and the CHP. The first draft of SB 848 proposed to change the current laws and regulations regarding establishment of speed limits and use of speed radar units by law enforcement officers in the state, in the following two general areas:

1. **SB 848 would have required that speed limits be always rounded down to the nearest 5 MPH increment of the 85th percentile.**
2. **SB 848 also proposed to completely eliminate the current requirement for having a valid E&TS for a roadway when radar units are used o issue speeding citations at that location (CVC Section 40802 -Speed Traps).**

As part of discussions with the bill's author and sponsors, it was agreed by all parties that the first part of the bill concerning the "rounding" issue when using an E&TS and the 85th percentile speed will be completely eliminated, as this is a technical and engineering

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New England

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New Mexico

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Hawaii

issue that needs to be further reviewed and discussed by the California Traffic Control Devices Committee (CTCDC) where such discussions rightfully belong, and if there needs to be any modifications or clarifications to the current language in the CA MUTCD, the CTCDC as the primary author and custodian of that document needs to make them. The second part of SB 848, concerning “speed traps”, was also further modified, and an amended bill was submitted.

We believe that SB 848, even in its amended form, is still a serious threat to the speed trap law that has existed in some form for over 70 years, and have expressed our opposition to the bill as amended. SB 848 is now a 2-year bill, and no further action on it will be taken in this legislative cycle. Furthermore, the “speed trap” part of the bill does not need a review and discussion by the CTCDC in its currently proposed language. Copies of the SB 848 as introduced and as amended are attached for reference.

However, because of the discussions about this bill and concerns raised by some municipalities, I find it appropriate to have a comprehensive review of the “rounding” issue in the context of the overall rules and regulations regarding establishment of speed limits, and take necessary steps, as my be need, to modify and/or further clarify the current language in the CA MUTCD about this issue.

This letter briefly explains this issue with some background information, and provides a few alternatives for consideration by the CTCDC as potential amendments, clarifications and/or changes to the Section 2B.13 of the CA MUTCD.

DISCUSSION

Prior to May 20, 2004, the Traffic Manual provided that when conducting an E&TS, the 85th percentile speed figure established by the survey should be rounded down to the nearest 5 MPH increment. The Traffic Manual and the California Vehicle Code (CVC) also allowed further modification of this speed by lowering it another 5 MPH, taking into account “conditions not readily apparent to the drivers.” If such conditions existed, the speed limit (rounded down to the nearest 5 MPH increment from the 85th percentile speed) could then have been reduced another 5 MPH to establish the legally posted speed limit.

Unfortunately, at many locations, the existence of “conditions not readily apparent to the drivers” was used on a very arbitrary basis, and in some cases quite contrary to the explicit clarification of the legislative intent as mentioned in the CVC section 22358.5 that states: *“It is the intent of the Legislature that physical conditions such as width, curvature, grade and surface conditions, or any other condition readily apparent to a driver, in absence of other factors, would not require special downward speed zoning....”*.

The specific requirements and conditions needed for such downward speed zonings were also further reviewed and adjudicated in the landmark case of *“People v. Goulet, 13*

Cal.App.4th Supp. 1” [Appellate Department, Superior Court, Ventura - Crim. A. No. 3227; Dec 18, 1992.]. A copy of the court’s ruling is attached for reference.

There are also other court decisions that have made references to “*People v. Goulet*”, and have invalidated the posted speed limits due to improper use of the “special downward speed zoning” provision; i.e.; “*People v. Perez, Rebecca Dolores*” {Superior Court of California – County of Orange; Case No. FL727253; 8/4/2005}. A copy of this case is attached for reference.

In 2004, the CA MUTCD replaced the Traffic Manual, and the speed zoning section of Traffic Manual was changed to require rounding the 85th percentile speed to the nearest 5 MPH increment rather than the lower 5 MPH increment. The primary reason for this change was to better conform to intent of the federal standards as established in the FHWA’s MUTCD, and also to address some of the widespread abuses of the 5 MPH special downward speeding zoning provision.

As in any other change, there was resistance to this one as well. Some reasonable and some for the sake of opposing change to the “way we used to do things”.

Although in some communities and for some roads the new standards have caused some concerns and challenges, for most part the new speed limits are being certified using the new standards without much problem, albeit not in a perfectly legal manner.

Some agencies are simply rounding the 85th percentile speeds from an E&TS to the nearest 5 MPH increment, and if that happens to be 5 MPH higher than what the road is posted for, then they arbitrarily use the “special downward speed zoning” provision and justify lowering the speed limit by 5 MPH. Most of these new speed limits will not successfully stand a legal challenge in light of “*People v. Goulet*”, but few are ever being challenged by the drivers who are cited on these roadways.

For example, an E&TS conducted after May 20, 2004 may indicate an 85th percentile of 43 MPH that would require the posting of a 45 MPH speed limit. However, prior to May 20, 2004 this would have qualified, under the “old” Traffic Manual, for a posted speed limit of 40 MPH. In such cases where the road is currently posted as 40 MPH and the recent 85th percentile comes in at 43 MPH, some local jurisdictions simply round “up” to the nearest 5 MPH increment, complying with the current language in Section 2B.13, resulting in a speed limit of 45 MPH, and then to avoid public or political opposition to increase in the currently posted speed limit of 40 MPH, staff develop creative language – in most cases not consistent with “*People v. Goulet*” language – to justify lowering the speed limit back to 40 MPH as it currently is posted.

Such practices, although may have addressed some of the concerns about artificially lowered speed limits, has created another problem through promoting improper use of the “special downward speed zoning” provision to justify existing posted speed limits that were initially established years ago without use of “special downward speed zoning” provision.

In light of these challenges, SB 848 was an attempt, albeit not a good one, to reverse the current standard and re-establish the “old” language of the Traffic Manual with no safeguards against the abuse of “special downward speed zoning” provision..

SB 848, should it have passed as introduced, would have also set a bad policy precedence, reversing California’s decades-long tradition, by establishing traffic engineering standards in a piecemeal manner through legislative process, as opposed to the current technical and deliberative process of the CTCDC.

Therefore, it may be prudent for the CTCDC to have a comprehensive evaluation of this issue, and formally take an action to further rectify or clarify this matter in the CA MUTCD.

RECOMMENDATIONS

The CTCDC may consider any of the following alternatives, combination of, and/or other approaches as part of their review of this issue.

Alternative 1

Make no changes to the current language of Section 2B.13 in the CA MUTCD, and formally adopt an official position that the CTCDC opposes any efforts, including any proposed legislation in the future, to change and/or amend this section.

The CTCDC may decide that this issue does not need any further evaluation, and the language in Section 2B.13 adequately addresses all conditions.

However, not addressing issues raised by some municipality and law enforcement agencies, may result in further attempts to address these concerns through legislative process in the future, which is not a desirable course of action for reasons previously discussed.

Alternative 2

Revise the language in Section 2B.13 to allow “rounding down” to the nearest 5 MPH increment (as it was in the Traffic Manual), and add specific language that when “special downward speed zoning” provision is used, then under no circumstances and for no reason the posted speed limit shall be lower than a certain benchmark. This benchmark can be:

1. No more than 7 MPH below the 85th percentile speed as determined by an E&T,
2. Not below the 50th percentile speed as determined by an E&TS,
3. A combination of No. 1 and No. 2, or
4. Other language safeguarding against excessively low speed limits.

This approach will accommodate concerns of some local agencies while providing safeguards against the abuse of "special downward speed zoning" provision.

The "7 MPH" benchmark will provide the same safeguard that the current language provides, while the "50th percentile" provision may ensure that the majority of drivers will not be in violation of the posted speed limit.

It will also help to add language to make specific reference in Section 2B.13 to the landmark case of "*People v. Goulet*" and CVC section 22358.5 further clarifying the requirements for the application of "special downward speed zoning" provision.

This alternative appears to address this issue in a rational, technical and practical manner.

Alternative 3

Revise the language in Section 2B.13 to allow "rounding up" or "rounding down" to the nearest 5 MPH increment based on engineering judgment, but prohibit the use of "special downward speed zoning" provision "under any circumstances" for locations where the speed limit has been "rounded down".

Such language, however, will create further confusion due to some discrepancies between the revised language and certain sections of the CVC.

Alternative 4

Revise the language in Section 2B.13 to the "old" Traffic Manual text to allow "rounding down" to the nearest 5 MPH with no additional changes.

This approach will re-create the problems that the "new" standard attempts to remedy and will not promote traffic safety.

If you wish to further discuss this matter, please call me at (714) 885-2326.

Sincerely,



Hamid Bahadori
Vice-chair, CTCDC

C: CTCDC Members

Attachments: SB 848, as introduced on 2/23/07
SB 848, as amended on 3/26/07
SB 848, as amended on 4/16/07
People v. Goulet
Orange County Case

Introduced by Senator Corbett

February 23, 2007

An act relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

SB 848, as introduced, Corbett. Vehicles: speed trap.

Existing law prohibits a peace officer or other person from using a speed trap in arresting a person for violating the Vehicle Code. Existing law defines the term "speed trap" for that and related purposes.

This bill would express the intent of the Legislature to enact appropriate legislation to revise the statutory definition of the term "speed trap."

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. It is the intent of the Legislature to enact
- 2 appropriate legislation to revise the statutory definition of the term
- 3 "speed trap."

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AMENDED IN SENATE MARCH 26, 2007

SENATE BILL

No. 848

Introduced by Senator Corbett

February 23, 2007

An act to amend Section 627 of, to add Sections 22358.6 and 22358.7 to, and to repeal and add Section 40802 of, the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

SB 848, as amended, Corbett. Vehicles: *engineering and traffic survey*: speed trap.

Existing

(1) Existing law defines the term "engineering and traffic survey," for purposes of the Vehicle Code, as meaning a survey of highway and traffic conditions in accordance with methods determined by the Department of Transportation for use by state and local authorities.

This bill would require that those methods consist of the methods specified in the department's Manual for Uniform Traffic Control Devices, California Supplement, as revised from time to time. The bill would also require that the posted speed limit be rounded down to the nearest 5 miles per hour increment of the 85th percentile speed.

The bill would require an engineering and traffic survey to be conducted in consultation with the law enforcement agency that has primary traffic jurisdiction over the highway that is surveyed.

The bill would also require the Department of Transportation or a city or county to conduct an engineering and traffic survey when there is a significant modification to a highway, including, but not limited to, a change in width, curvature, grade, intersection, or surface condition in that highway.

Because this bill would increase the level of services imposed on a city or county, this bill would impose a state-mandated local program.

(2) Existing law authorizes a city or county to increase or decrease an existing speed limit on a particular portion of a highway in accordance with specific statutory authority.

This bill would require a local city or county prior to increasing or decreasing a speed limit based upon an engineering and traffic survey to consult with, and take into account the traffic safety considerations of, the local law enforcement agency that has primary traffic responsibility for that particular portion of the highway.

(3) Existing law prohibits a peace officer or other person from using a speed trap in arresting a person for violating the Vehicle Code. Existing law defines the term “speed trap” for that and related purposes to include, in the alternative, either of the following: (A) a particular section of highway as to distance and with boundaries marked, designated, or otherwise determined in order that the speed of a vehicle may be calculated by securing the time it takes the vehicle to travel the known distance; or (B) a particular section of a highway with a prima facie speed limit as provided by the Vehicle Code or by local ordinance, if that prima facie speed limit is not justified by an engineering and traffic survey conducted within 5 or 7, years, as specified prior to the date of an alleged violation, and enforcement of the speed limit involves the use of radar or any other electronic device that measures the speed of moving objects.

This bill would ~~express the intent of the Legislature to enact appropriate legislation to revise the statutory~~ delete (B) as an alternative definition of the term “speed trap.”

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 627 of the Vehicle Code is amended to*
2 *read:*

3 627. (a) “Engineering and traffic survey,” as used in this code,
4 means a survey of highway and traffic conditions in accordance
5 with methods determined by the Department of Transportation,
6 *as specified in the department’s Manual for Uniform Traffic*
7 *Control Devices, California Supplement, as revised from time to*
8 *time, for use by state and local authorities.*

9 (b) An engineering and traffic survey shall include, among other
10 requirements deemed necessary by the ~~department~~ *Department of*
11 *Transportation*, consideration of all of the following *factors*:

12 (1) Prevailing speeds as determined by traffic engineering
13 measurements.

14 (2) Accident records.

15 (3) Highway, traffic, and roadside conditions not readily
16 apparent to the driver.

17 (4) *When determining the posted speed limit, that speed limit*
18 *shall be rounded down to the nearest five miles per hour increment*
19 *of the 85th percentile speed.*

20 (c) *An engineering and traffic survey shall be conducted in*
21 *consultation with the law enforcement agency that has primary*
22 *traffic jurisdiction over the highway that is surveyed.*

23 ~~(e)~~

24 (d) When conducting an engineering and traffic survey, local
25 authorities, in addition to the factors set forth in paragraphs (1) to
26 ~~(3)~~ (4), inclusive, of subdivision (b) may consider all of the
27 following:

28 (1) Residential density, if any of the following conditions exist
29 on the particular portion of highway and the property contiguous
30 thereto, other than a business district:

31 (A) Upon one side of the highway, within a distance of a quarter
32 of a mile, the contiguous property fronting thereon is occupied by
33 13 or more separate dwelling houses or business structures.

34 (B) Upon both sides of the highway, collectively, within a
35 distance of a quarter of a mile, the contiguous property fronting
36 thereon is occupied by 16 or more separate dwelling houses or
37 business structures.

(C) The portion of highway is longer than one-quarter of a mile but has the ratio of separate dwelling houses or business structures to the length of the highway described in either subparagraph (A) or (B).

(2) Pedestrian and bicyclist safety.

SEC. 2. Section 22358.6 is added to the Vehicle Code, to read:

22358.6. The Department of Transportation or local transportation authority shall conduct an engineering and traffic survey whenever there is significant modification to a highway, including, but not limited to, a change in width, curvature, grade, intersection, or surface condition to that highway.

SEC. 3. Section 22358.7 is added to the Vehicle Code, to read:

22358.7. Whenever a local authority determines, upon the basis of an engineering and traffic survey, to increase or decrease the existing speed limit on a particular portion of a highway pursuant to Section 22357, 22358, 22358.3, 22358.4, 22360, or 22364, the local authority shall, prior to increasing or decreasing that speed limit, consult with, and take into account the traffic safety considerations of, the local law enforcement agency that has primary traffic responsibility for that particular portion of the highway.

SEC. 4. Section 40802 of the Vehicle Code is repealed.

~~40802. (a) A “speed trap” is either of the following:~~

~~(1) A particular section of a highway measured as to distance and with boundaries marked, designated, or otherwise determined in order that the speed of a vehicle may be calculated by securing the time it takes the vehicle to travel the known distance.~~

~~(2) A particular section of a highway with a prima facie speed limit that is provided by this code or by local ordinance under subparagraph (A) of paragraph (2) of subdivision (a) of Section 22352, or established under Section 22354, 22357, 22358, or 22358.3, if that prima facie speed limit is not justified by an engineering and traffic survey conducted within five years prior to the date of the alleged violation, and enforcement of the speed limit involves the use of radar or any other electronic device that measures the speed of moving objects. This paragraph does not apply to a local street, road, or school zone.~~

~~(b) (1) For purposes of this section, a local street or road is defined by the latest functional usage and federal-aid system maps submitted to the federal Highway Administration, except that when~~

1 these maps have not been submitted, or when the street or road is
2 not shown on the maps, a “local street or road” means a street or
3 road that primarily provides access to abutting residential property
4 and meets the following three conditions:

5 (A) Roadway width of not more than 40 feet.

6 (B) Not more than one-half of a mile of uninterrupted length.
7 Interruptions shall include official traffic control signals as defined
8 in Section 445.

9 (C) Not more than one traffic lane in each direction.

10 (2) For purposes of this section “school zone” means that area
11 approaching or passing a school building or the grounds thereof
12 that is contiguous to a highway and on which is posted a standard
13 “SCHOOL” warning sign, while children are going to or leaving
14 the school either during school hours or during the noon recess
15 period. “School zone” also includes the area approaching or passing
16 any school grounds that are not separated from the highway by a
17 fence, gate, or other physical barrier while the grounds are in use
18 by children if that highway is posted with a standard “SCHOOL”
19 warning sign.

20 (c) (1) When all of the following criteria are met, paragraph
21 (2) of this subdivision shall be applicable and subdivision (a) shall
22 not be applicable:

23 (A) When radar is used, the arresting officer has successfully
24 completed a radar operator course of not less than 24 hours on the
25 use of police traffic radar, and the course was approved and
26 certified by the Commission on Peace Officer Standards and
27 Training.

28 (B) When laser or any other electronic device is used to measure
29 the speed of moving objects, the arresting officer has successfully
30 completed the training required in subparagraph (A) and an
31 additional training course of not less than two hours approved and
32 certified by the Commission on Peace Officer Standards and
33 Training.

34 (C) (i) The prosecution proved that the arresting officer
35 complied with subparagraphs (A) and (B) and that an engineering
36 and traffic survey has been conducted in accordance with
37 subparagraph (B) of paragraph (2). The prosecution proved that,
38 prior to the officer issuing the notice to appear, the arresting officer
39 established that the radar, laser, or other electronic device
40 conformed to the requirements of subparagraph (D).

1 (ii) ~~The prosecution proved the speed of the accused was unsafe~~
2 ~~for the conditions present at the time of alleged violation unless~~
3 ~~the citation was for a violation of Section 22349, 22356, or 22406.~~

4 (D) ~~The radar, laser, or other electronic device used to measure~~
5 ~~the speed of the accused meets or exceeds the minimal operational~~
6 ~~standards of the National Traffic Highway Safety Administration;~~
7 ~~and has been calibrated within the three years prior to the date of~~
8 ~~the alleged violation by an independent certified laser or radar~~
9 ~~repair and testing or calibration facility.~~

10 (2) ~~A “speed trap” is either of the following:~~

11 (A) ~~A particular section of a highway measured as to distance~~
12 ~~and with boundaries marked, designated, or otherwise determined~~
13 ~~in order that the speed of a vehicle may be calculated by securing~~
14 ~~the time it takes the vehicle to travel the known distance.~~

15 (B) (i) ~~A particular section of a highway or state highway with~~
16 ~~a prima facie speed limit that is provided by this code or by local~~
17 ~~ordinance under subparagraph (A) of paragraph (2) of subdivision~~
18 ~~(a) of Section 22352, or established under Section 22354, 22357,~~
19 ~~22358, or 22358.3, if that prima facie speed limit is not justified~~
20 ~~by an engineering and traffic survey conducted within one of the~~
21 ~~following time periods, prior to the date of the alleged violation,~~
22 ~~and enforcement of the speed limit involves the use of radar or~~
23 ~~any other electronic device that measures the speed of moving~~
24 ~~objects:~~

25 (H) ~~Except as specified in subclause (H), seven years.~~

26 (H) ~~If an engineering and traffic survey was conducted more~~
27 ~~than seven years prior to the date of the alleged violation, and a~~
28 ~~registered engineer evaluates the section of the highway and~~
29 ~~determines that no significant changes in roadway or traffic~~
30 ~~conditions have occurred, including, but not limited to, changes~~
31 ~~in adjoining property or land use, roadway width, or traffic volume,~~
32 ~~10 years.~~

33 (ii) ~~This subparagraph does not apply to a local street, road, or~~
34 ~~school zone.~~

35 SEC. 5. *Section 40802 is added to the Vehicle Code, to read:*

36 40802. *A “speed trap” is a particular section of a highway*
37 *measured as to distance and with boundaries marked, designated,*
38 *or otherwise determined in order that the speed of a vehicle may*
39 *be calculated by securing the time it takes the vehicle to travel the*
40 *known distance.*

1 *SEC. 6. If the Commission on State Mandates determines that*
2 *this act contains costs mandated by the state, reimbursement to*
3 *local agencies and school districts for those costs shall be made*
4 *pursuant to Part 7 (commencing with Section 17500) of Division*
5 *4 of Title 2 of the Government Code.*

6 ~~SECTION 1. It is the intent of the Legislature to enact~~
7 ~~appropriate legislation to revise the statutory definition of the term~~
8 ~~“speed trap.”~~

AMENDED IN SENATE APRIL 16, 2007

AMENDED IN SENATE MARCH 26, 2007

SENATE BILL

No. 848

Introduced by Senator Corbett

February 23, 2007

An act to amend Section ~~627~~ of, to add Sections ~~22358.6~~ and ~~22358.7~~ to, and to repeal and add Section ~~40802~~ of, *40802* of the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

SB 848, as amended, Corbett. Vehicles: ~~engineering and traffic survey~~; speed trap.

(1) Existing law defines the term “~~engineering and traffic survey~~,” for purposes of the Vehicle Code, as meaning a survey of highway and traffic conditions in accordance with methods determined by the Department of Transportation for use by state and local authorities.

This bill would require that those methods consist of the methods specified in the department’s Manual for Uniform Traffic Control Devices, California Supplement, as revised from time to time. The bill would also require that the posted speed limit be rounded down to the nearest 5 miles per hour increment of the 85th percentile speed.

The bill would require an engineering and traffic survey to be conducted in consultation with the law enforcement agency that has primary traffic jurisdiction over the highway that is surveyed.

The bill would also require the Department of Transportation or a city or county to conduct an engineering and traffic survey when there is a significant modification to a highway, including, but not limited to, a change in width, curvature, grade, intersection, or surface condition in that highway.

~~Because this bill would increase the level of services imposed on a city or county, this bill would impose a state-mandated local program.~~

~~(2) Existing law authorizes a city or county to increase or decrease an existing speed limit on a particular portion of a highway in accordance with specific statutory authority.~~

~~This bill would require a local city or county prior to increasing or decreasing a speed limit based upon an engineering and traffic survey to consult with, and take into account the traffic safety considerations of, the local law enforcement agency that has primary traffic responsibility for that particular portion of the highway.~~

~~(3)~~

~~(1) Existing law prohibits a peace officer or other person from using a speed trap in arresting a person for violating the Vehicle Code. Existing law defines the term “speed trap” for that and related purposes to include, in the alternative, either of the following: (A) a particular section of highway as to distance and with boundaries marked, designated, or otherwise determined in order that the speed of a vehicle may be calculated by securing the time it takes the vehicle to travel the known distance; or (B) a particular section of a highway with a prima facie speed limit as provided by the Vehicle Code or by local ordinance, if that prima facie speed limit is not justified by an engineering and traffic survey conducted within 5 or 7, years, as specified prior to the date of an alleged violation, and enforcement of the speed limit involves the use of radar or any other electronic device that measures the speed of moving objects.~~

~~This bill would delete (B) as an exclude from the (B) alternative definition of the term “speed trap.” trap” instances when an arresting officer is able to demonstrate that the driver’s speed exceeded the prima facie speed limit by at least 15 miles per hour and the speed is greater than is reasonable and prudent having due regard for certain highway factors, or at a speed that endangers the safety of persons or property.~~

~~(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.~~

~~Because this bill would increase the number of speeding cases subject to prosecution, this bill would impose a state-mandated local program~~

by increasing the level of services imposed on local law enforcement agencies.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 40802 of the Vehicle Code is amended to*
2 *read:*

3 40802. (a) A “speed trap” is either of the following:

4 (1) A particular section of a highway measured as to distance
5 and with boundaries marked, designated, or otherwise determined
6 in order that the speed of a vehicle may be calculated by securing
7 the time it takes the vehicle to travel the known distance.

8 (2) (A) A particular section of a highway with a prima facie
9 speed limit that is provided by this code or by local ordinance
10 under subparagraph (A) of paragraph (2) of subdivision (a) of
11 Section 22352, or established under Section 22354, 22357, 22358,
12 or 22358.3, if that prima facie speed limit is not justified by an
13 engineering and traffic survey conducted within five years prior
14 to the date of the alleged violation, and enforcement of the speed
15 limit involves the use of radar or any other electronic device that
16 measures the speed of moving objects. ~~This paragraph~~

17 (B) Subparagraph (A) does not apply to a either of the following:

18 (i) A local street, road, or school zone.

19 (ii) When an arresting officer is able to demonstrate that the
20 driver’s speed exceeded the prima facie speed limit by at least 15
21 miles per hour and that speed is greater than is reasonable and
22 prudent having due regard for weather, visibility, the traffic on,
23 and the surface and width of, the highway, or at a speed that
24 endangers the safety of persons or property.

25 (b) (1) For purposes of this section, a local street or road is
26 defined by the latest functional usage and federal-aid system maps
27 submitted to the federal Highway Administration, except that when

1 these maps have not been submitted, or when the street or road is
2 not shown on the maps, a “local street or road” means a street or
3 road that primarily provides access to abutting residential property
4 and meets the following three conditions:

5 (A) Roadway width of not more than 40 feet.

6 (B) Not more than one-half of a mile of uninterrupted length.
7 Interruptions shall include official traffic control signals as defined
8 in Section 445.

9 (C) Not more than one traffic lane in each direction.

10 (2) For purposes of this section “school zone” means that area
11 approaching or passing a school building or the grounds thereof
12 that is contiguous to a highway and on which is posted a standard
13 “SCHOOL” warning sign, while children are going to or leaving
14 the school either during school hours or during the noon recess
15 period. “School zone” also includes the area approaching or passing
16 any school grounds that are not separated from the highway by a
17 fence, gate, or other physical barrier while the grounds are in use
18 by children if that highway is posted with a standard “SCHOOL”
19 warning sign.

20 (c) (1) When all of the following criteria are met, paragraph
21 (2) of this subdivision shall be applicable and subdivision (a) shall
22 not be applicable:

23 (A) When radar is used, the arresting officer has successfully
24 completed a radar operator course of not less than 24 hours on the
25 use of police traffic radar, and the course was approved and
26 certified by the Commission on Peace Officer Standards and
27 Training.

28 (B) When laser or any other electronic device is used to measure
29 the speed of moving objects, the arresting officer has successfully
30 completed the training required in subparagraph (A) and an
31 additional training course of not less than two hours approved and
32 certified by the Commission on Peace Officer Standards and
33 Training.

34 (C) (i) The prosecution proved that the arresting officer
35 complied with subparagraphs (A) and (B) and that an engineering
36 and traffic survey has been conducted in accordance with
37 subparagraph (B) of paragraph (2). The prosecution proved that,
38 prior to the officer issuing the notice to appear, the arresting officer
39 established that the radar, laser, or other electronic device
40 conformed to the requirements of subparagraph (D).

1 (ii) The prosecution proved the speed of the accused was unsafe
2 for the conditions present at the time of alleged violation unless
3 the citation was for a violation of Section 22349, 22356, or 22406.

4 (D) The radar, laser, or other electronic device used to measure
5 the speed of the accused meets or exceeds the minimal operational
6 standards of the National Traffic Highway Safety Administration,
7 and has been calibrated within the three years prior to the date of
8 the alleged violation by an independent certified laser or radar
9 repair and testing or calibration facility.

10 (2) A “speed trap” is either of the following:

11 (A) A particular section of a highway measured as to distance
12 and with boundaries marked, designated, or otherwise determined
13 in order that the speed of a vehicle may be calculated by securing
14 the time it takes the vehicle to travel the known distance.

15 (B) (i) A particular section of a highway or state highway with
16 a prima facie speed limit that is provided by this code or by local
17 ordinance under subparagraph (A) of paragraph (2) of subdivision
18 (a) of Section 22352, or established under Section 22354, 22357,
19 22358, or 22358.3, if that prima facie speed limit is not justified
20 by an engineering and traffic survey conducted within one of the
21 following time periods, prior to the date of the alleged violation,
22 and enforcement of the speed limit involves the use of radar or
23 any other electronic device that measures the speed of moving
24 objects:

25 (I) Except as specified in subclause (II), seven years.

26 (II) If an engineering and traffic survey was conducted more
27 than seven years prior to the date of the alleged violation, and a
28 registered engineer evaluates the section of the highway and
29 determines that no significant changes in roadway or traffic
30 conditions have occurred, including, but not limited to, changes
31 in adjoining property or land use, roadway width, or traffic volume,
32 10 years.

33 (ii) This subparagraph does not apply to a local street, road, or
34 school zone.

35 *SEC. 2. No reimbursement is required by this act pursuant to*
36 *Section 6 of Article XIII B of the California Constitution because*
37 *the only costs that may be incurred by a local agency or school*
38 *district will be incurred because this act creates a new crime or*
39 *infraction, eliminates a crime or infraction, or changes the penalty*
40 *for a crime or infraction, within the meaning of Section 17556 of*

1 *the Government Code, or changes the definition of a crime within*
2 *the meaning of Section 6 of Article XIII B of the California*
3 *Constitution.*

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**All matter omitted in this version of the bill
appears in the bill as amended in the
Senate, March 26, 2007. (JR11)**

People v. Goulet, 13 Cal.App.4th Supp. 1

Appellate Department, Superior Court, Ventura

[Crim. A. No. 3227. Dec 18, 1992.]

THE PEOPLE, Plaintiff and Respondent, v. JUDITH ANN GOULET, Defendant and Appellant.

(Municipal Court of Ventura County, No. 91M112920, Kenneth W. Riley, Judge.)

(Opinion by Osborne, P. J., with McNally and Steele, JJ., concurring.)

COUNSEL

Judith Ann Goulet, in pro. per., for Defendant and Appellant.

Michael Bradbury, District Attorney, Kent Baker and William Redmond, Deputy District Attorneys, for Plaintiff and Respondent.

OPINION

OSBORNE, P. J.

A. Introduction

Several cases have clearly explained the speed trap laws adopted by the California Legislature, the policies behind them, the burden placed on the prosecution, and the general statutory requirements for an engineering and traffic survey to justify a speed zone reduced below 55 miles per hour. In this case, we apply those requirements and determine that a survey did not justify the speed zone adopted by a local authority.

[1] The Legislature has declared a strong public policy against the use of speed traps. (People v. Halopoff (1976) 60 Cal.App.3d Supp. 1 [131 Cal.Rptr. 531].) The policy has been explained various ways. It furthers a policy of prevention by plain sight patrolling rather than punishment after the fact, and encourages observance of all the rules of the road. (Fleming v. Superior Court (1925) 196 Cal. 344, 349 [238 P. 88].) "Commentators have suggested that the Legislature was also motivated by a desire to eliminate clandestine methods of traffic enforcement designed to augment local revenues through exorbitant fines. [Citations.]" (People v. Sullivan (1991) 234 Cal.App.3d 56, 58 [285 Cal.Rptr. 553].)

Speed trap rules are not applicable to evidence of speed based on use of a speedometer without any use of radar. The Legislature may anticipate that **[13 Cal.App.4th Supp. 4]**

when an officer is driving a vehicle and enforcing prima facie speed laws by observing traffic, roadside conditions, his and/or her own perceptions of safety under the circumstances, and then noting speed from the speedometer of the patrol vehicle, the judgment is likely to be similar to the reasonable and prudent majority of drivers, and not be determined merely by a speed limit which, for political, revenue, or other reasons, a local authority may have set below what is reasonable and necessary for safe and efficient movement of traffic.

Traffic rules account for most of the contact by average citizens with law enforcement and the courts. Enforcement of laws which are widely perceived as unreasonable and unfair generates disrespect and even contempt toward those who make and enforce those laws.

Whatever the motivation, the Legislature has spoken clearly and emphatically about speed trap laws.

B. Facts

Appellant was cited for violation of section 22350 fn. 1 of the California Vehicle Code fn. 2 , exceeding the basic speed limit. The citation states her approximate speed as 52 miles per hour, the prima facie speed limit as 35 miles per hour, and the safe speed as 35 miles per hour. The citation notes the use of radar.

Deputy Berg testified that he visually estimated appellant's speed at 50 to 55 miles per hour in a posted 35 miles per hour zone, the radar showed 52 miles per hour, he pursued and stopped her, and he cited her. fn. 3 He stated she was traveling near a senior citizens' complex where there is often a lot of foot traffic and bicyclists.

In support of the 35 mph speed zone, an engineering and traffic survey was performed May 19, 1988. The road is a major artery with a raised median center divider, with two striped lanes in each direction.

For traffic in the direction appellant was traveling, the 85th percentile critical speed was 48 mph. That is, 85 percent of the surveyed vehicles were traveling at a speed of 48 mph or less. The average speed was 43 mph. The speed limit of 35 mph was exceeded by 95 percent of the drivers. [13 Cal.App.4th Supp. 5]

The "Accident and Roadside Features Review" section of the engineering and traffic survey lists "Unusual Roadside Features" as "1,000' radius curve, limited sight distance to commercial driveways." The segment length is 3,300 feet. The 1987 average daily traffic is stated as 12,300. The number of speed-related accidents (1985, 1986, 1987) is zero. fn. 4

C. Issues

[2a] Appellant raises several issues stated in different ways. We find two issues to be dispositive and thus do not find it necessary to discuss the others in detail. She contends, and we conclude: (1) The speed trap laws required the prosecution to establish that the posted speed limit was justified by a valid engineering and traffic survey, and (2) The posted speed limit of 35 mph was not justified by the engineering and traffic survey.

D. Overview

In this case, there is no issue regarding timing a vehicle over a measured distance, fn. 5 an officer not wearing a distinctive uniform, or an officer using a vehicle not painted a distinctive color. fn. 6 The only issue relates to the use of radar, and therefore the analysis begins with the provisions of subdivision (b) of section 40802.

Under subdivision (b) of section 40802, speed trap rules do not apply, and radar can be used:

1. On "local streets and roads" as defined by section 40802, subdivision (b),
2. To enforce an absolute 60 or 65 mph speed limit set pursuant to section 22356, and
3. To enforce the absolute 55 mph speed limit established by section 22349, unless a lower speed limit has been purportedly established pursuant to section 22354 or section 22358. (See fn. 7.) **[13 Cal.App.4th Supp. 6]**

None of these exceptions apply to the present case.

Under subdivision (b) of section 40802, there can be no prosecution of any charge involving the speed of a vehicle, fn. 7 where enforcement involves the use of radar, except in compliance with speed trap rules, on a particular section of a highway with a prima facie speed limit decreased pursuant to section 22354, 22358, or 22358.3. fn. 8

This case involves a speed limit decreased by local authority pursuant to section 22358, and therefore the prosecution must comply with the speed trap rules.

E. Speed Trap Rules

Deputy Berg testified that he visually estimated appellant's speed at 50 to 55 mph in a posted 35 mph zone, and that his radar showed 52 mph.

Appellant argues that the prosecution used radar evidence to convict her, the radar evidence was illegally obtained by use of a speed trap, and therefore the court lacked jurisdiction. Appellant cites *People v. Halopoff*, supra, 60 Cal.App.3d Supp. 1 and *People v. Sterritt* (1976) 65 Cal.App.3d Supp. 1 [135 Cal.Rptr. 522], among other cases. Respondent contends that in those cases, the only evidence of guilt was a radar reading with no independent speed observations by the officers, whereas in this case the evidence

includes an initial visual estimate of appellant's speed which was then confirmed by radar.

We are aware that, in unpublished decisions, other panels of this appellate department have distinguished Halopoff and Sterritt on that basis. We conclude that such a distinction is in error. Sections 40802, subdivision (b) and **[13 Cal.App.4th Supp. 7]** 40803, subdivision (b) and both apply "where enforcement involves the use of radar." (Italics added.) These sections do not say that they apply only where enforcement is exclusively based on the use of radar.

Section 40801 prohibits use of a speed trap in securing evidence of the speed of a vehicle for prosecution under the Vehicle Code. fn. 9

Section 40802 defines a "speed trap." fn. 10 It includes a section of a highway with a prima facie speed limit provided by local ordinance pursuant to section 22358, which speed limit is not justified by an engineering and traffic survey conducted within the five years prior to the date of the alleged violation, and where enforcement involves the use of radar.

Section 40803, subdivision (a), provides that no evidence as to the speed of a vehicle shall be admitted in any court upon the trial of any person for an alleged violation of this code when the evidence is based upon or obtained from or by the maintenance of a speed trap. fn. 11 **[13 Cal.App.4th Supp. 8]**

Section 40804 provides that in a prosecution for a charge involving speed, any officer shall be incompetent as a witness if the testimony is obtained by the maintenance of a speed trap. fn. 12

Section 40805 provides that a court is without jurisdiction to render a judgment of conviction for speeding if the court admits any evidence secured in violation of sections 40800 through 40808. fn. 13 The only exception for a highway with a prima facie speed limit is for "local streets and roads" as defined in section 40802.

Thus, as noted above, section 40802, subdivision (b) provides that a "speed trap" is a section of highway with a prima facie speed limit which is not justified by an engineering and traffic survey conducted within five years and where enforcement involves the use of radar. Subdivision (b) of section 40803 provides that in a speeding prosecution where enforcement involves the use of radar, the prosecution shall establish, as part of its prima facie case, that the evidence is not based upon a speed trap.

As in this case, *People v. Peterson* (1986) 181 Cal.App.3d Supp. 7 [226 Cal.Rptr. 544] and *People v. DiFiore* (1987) 197 Cal.App.3d Supp. 26 [243 Cal.Rptr. 359] applied the speed trap sections to cases in which officers also **[13 Cal.App.4th Supp. 9]** testified to visual estimates. (See also *People v. Sullivan*, supra, 234 Cal.App.3d at pp. 60-62.)

Section 40803, subdivision (b) places on the prosecution the duty to establish that the evidence or testimony is not based upon a speed trap, that is, that the speed limit is justified by an engineering and traffic survey. fn. 14

F. The Rules for a Survey fn. 15

In this case, there is a survey which was made within five years prior to the alleged violation. fn. 16 Appellant contends that the survey does not justify the 35 mph speed limit.

Can there be a good speed trap when there is a survey within the specified five-year period? Yes. Evidence that there was a survey within five years is prima facie evidence that the evidence or testimony is not based on a speed trap. (§ 40803, subd. (c)). However, that is merely a prima facie case, and the speed limit must be justified by the survey. A speed limit is not justified by a survey unless the survey proves or shows the speed limit to be just and based upon a sufficient lawful reason.

What are the rules applicable to a survey which can justify a reduced speed limit for the purpose of radar speed enforcement?

1. A local authority may, based on a survey, set a prima facie speed limit (less than 55 mph) which is most appropriate to facilitate the orderly movement of traffic and is reasonable and safe. fn. 17 This general standard is given more specific meaning by the Department of Transportation. Section [13 Cal.App.4th Supp. 10] 627 provides that a survey must comply with methods determined by the Department of Transportation, and shall consider prevailing speeds, accident records, and conditions not readily apparent to the driver. fn. 18

2. In the absence of other factors, physical conditions readily apparent to a driver do not require reduced speed zoning. fn. 19

3. Methods required by the Department of Transportation are published in a traffic manual. Chapter 8 provides traffic regulations. Sections 8- 03.1 through 8-03.4 deal with speed limits and zones. Excerpts of section 8-03.3 governing establishment of prima facie speed zones are set forth in the appendix.

The following except from the traffic manual, section 8-03.3, subdivision B.1.b., provides a frame of reference:

"Speed limits should be established preferably at or near the 85 percentile speed, which is defined as that speed at or below which 85 percent of the traffic is moving. ... Speed limits higher than the 85 percentile are not generally considered reasonable and safe and limits below the 85 percentile do not facilitate the orderly movement of traffic. Speed limits established on this basis conform to the consensus of those who drive highways as to what speed is reasonable and safe; and are not dependent on the judgement of one or a few individuals.

"The basic speed law states that no person shall drive at a speed greater than is reasonable or prudent. The majority of drivers comply with this law, and disregard regulations which they consider unreasonable. It is only the top fringe of drivers that are inclined to be reckless and unreliable, or who have faulty judgement and must be controlled by enforcement. Speed limits set at or slightly below the 85 percentile speed provide law enforcement [13 Cal.App.4th Supp. 11] officers with a means of controlling the drivers who will not conform to what the majority considers reasonable and prudent.

"Only when roadside development results in traffic conflicts and unusual conditions which are not readily apparent to drivers, are speed limits somewhat below the 85 percentile warranted."

For the purposes of this case, the rules are well summarized in the traffic manual, section 8-03.3, subdivision B.2.b., which provides in part:

"The speed limit normally should be established at the first five mile per hour increment below the 85 percentile speed. However, in matching existing conditions with the traffic safety needs of the community, engineering judgement may indicate the need for a further reduction of five miles per hour. The factors justifying such a further reduction are the same factors mentioned above. Whenever such factors are considered to establish the speed limit, they should be documented on the speed zone survey or the accompanying engineering report.

"The Engineering and Traffic Survey should contain sufficient information to document that the conditions of CVC Section 627 have been complied with and that other conditions not readily apparent to a motorist are properly identified.

"The establishment of a speed limit of more than 5 miles per hour below the 85 percentile (critical) speed should be done with great care as this may make violators of a disproportionate number of the reasonable majority of drivers."

G. Application of the Rules to the Survey in This Case

Deputy Berg testified appellant was traveling near a senior citizens' complex where there is often a lot of foot traffic and bicyclists. An officer's description of conditions at the time of the alleged violation would be relevant to whether there was a violation of section 22350, if he were competent to testify. But his testimony is irrelevant to the existence of a speed trap. The existence of a speed trap depends on whether the survey justified the action of the local authority in setting the speed limit.

The survey was performed May 19, 1988, well within the five-year requirement. The road is a major artery with a raised median center divider, with two striped lanes in each direction.

For traffic in the direction appellant was traveling, the 85th percentile critical speed was 48 mph. Only 15 percent of drivers exceed 48 mph, [13 Cal.App.4th Supp. 12] whereas

85 percent drove at that speed or slower. As a general rule, that would support a prima facie speed limit of 45 mph. The average speed was 43 mph. The speed limit was actually set at 35 mph, a speed exceeded by 95 percent of the drivers.

Obviously the collective judgment of the presumed reasonable and prudent majority of drivers does not support the speed limit based on readily apparent conditions. To support such a reduced speed limit, the survey must contain sufficient information to document other conditions not readily apparent to a motorist.

The "Accident and Roadside Features Review" section of the survey lists "Unusual Roadside Features" as "1,000' radius curve, limited sight distance to commercial driveways." The segment length is 3,300 feet. The 1987 average daily traffic is stated as 12,300. The number of speed-related accidents (1985, 1986, 1987) is zero.

Section 22358.5 precludes justifying reduced speed zoning on physical conditions such as curvature or any other condition readily apparent to a driver.

That leaves only the reference to "limited sight distance to commercial driveways" to justify the speed limit. It is questionable whether, with that volume of daily traffic, a condition not apparent to drivers can justify a 10 mph speed reduction unless the accident rate is greater than would be statistically expected from the traffic volume and road type. Here, there were no speed-related accidents within three years. However, the stated condition fails to justify the speed for another reason. The survey does not state the sight distance or the location of the driveways, or explain how the condition affects the safe speed. This is not a mere technical nicety. In this case, two licensed traffic engineers testified there are no driveways that affect safety for traffic traveling in the direction of appellant.

The two traffic engineers gave compelling testimony explaining the insufficiencies of the engineering and traffic survey in this case. We have not dwelt on their testimony for several reasons. A trier of fact may, at least under certain circumstances, reject the testimony of expert witnesses. (*People v. Green* (1984) 163 Cal.App.3d 239 [209 Cal.Rptr. 255].) Most drivers cited for traffic violations post and forfeit bail, feeling they cannot afford the inconvenience or the time off work to contest even a citation they believe to be unfair. Conviction of common, frequent traffic infractions, with the attendant consequences of fines, points toward suspension of driver's licenses, and increased insurance rates, ought not depend on the ability of a **[13 Cal.App.4th Supp. 13]** driver to obtain the assistance of a licensed traffic engineer. The Legislature has carefully constructed the speed trap laws to be jurisdictional in nature. The prosecution ought not attempt to invoke, and the judiciary ought not attempt to exercise, jurisdiction contrary to the clearly expressed statutory limitation.

In the supplemental brief we requested, respondent argues that the survey states the opinion of the city traffic engineer that the accident or roadside features warrant additional speed zone reduction. Respondent concludes: "The established speed limit of 35 miles per hour was based upon a proper compliance with procedure and the law.

Although experts in traffic engineering may disagree with a specific speed or conditions, the law requires only that a proper procedure be followed to establish a given speed in a given location."

Disagreement of experts will not necessarily invalidate a prima facie speed limit. But if respondent is arguing that an engineer's stated opinion is merely a procedural prerequisite not subject to judicial review, we disagree. A trial judge must first see if there is a timely survey that purports to justify the speed limit. If so, the trial judge must determine if the facts stated in the survey justify the speed limit set. If the judge determines that the speed limit is not justified, the speeding charge must be dismissed. If the judge determines the speed limit is justified, the judge will then decide whether guilt is proved beyond a reasonable doubt, subject to review on both issues if there is a conviction. fn. 20

H. Effect of Proposition 8

Respondent contended (1) speed trap rules were not applicable because there was evidence of a visual estimate of speed, and (2) the speed trap rules, if applicable, were satisfied because there was a survey within five years. Respondent did not address the application of Proposition 8. [3] Having rejected those two arguments by respondent, we must address Proposition 8.

The long-standing rule of section 40803, subdivision (a) requiring exclusion of evidence obtained by use of a speed trap was abrogated June 8, 1982, [13 Cal.App.4th Supp. 14] by the adoption of the Proposition 8 "Right to Truth-in-Evidence" provision contained in article I, section 28, subdivision (d), of the California Constitution. (People v. Sullivan, supra, 234 Cal.App.3d 56.)

However, as discussed above in part E, the sanction for violation of speed trap prohibitions is not merely exclusion of the offending radar evidence. The officer is incompetent as a witness to a charge of speeding (§ 40804), and the court is deprived of jurisdiction (§ 40805). Some have argued that Proposition 8 also abrogated those provisions. People v. Munoz (1992) 11 Cal.App.4th 1190, 1191 [15 Cal.Rptr.2d 21], footnote 1, indicates that the appellate department, following People v. Sullivan, supra, 234 Cal.App.3d 56, held Proposition 8 eliminated exclusion of speed trap evidence in speeding cases. We question that conclusion. fn. 21

The question has been decisively resolved by the adoption of section 40808 by Statutes 1992, chapter 538, section 2. The measure passed the Senate 35 to 0 and the Assembly 57 to 3, both well in excess of the two-thirds majority required by Proposition 8. The new section, effective January 1, 1993, provides: "Subdivision (d) of Section 28 of Article I of the California Constitution shall not be construed as abrogating the evidentiary provisions of this article." People v. Munoz, supra, 11 Cal.App.4th 1190 held that the new statute should be applied retrospectively to all cases not final on the effective date of the statute. (Chapter 538 also amended section 40803, subdivision (a) to make it, like sections 40803, subdivision (b), 40804, and 40805, applicable only in a prosecution upon a charge

involving the speed of a vehicle, preserving the holding of Sullivan in prosecutions of charges not involving speed.)

In short, the speed trap rules apply only to charges involving the speed of a vehicle, and are not abrogated by Proposition 8.

I. Conclusion

The Legislature has spoken clearly on the subject of speed traps. Speed traps-reduced speed zones not justified by the conditions-bring disrespect [13 Cal.App.4th Supp. 15] to law enforcement and the courts. We have discussed the requirements and consequences at length because it must be clear to traffic engineers, local authorities, and law enforcement officers that if a prima facie speed limit is set without being justified in fact by the engineering and traffic survey, the speed limit cannot be enforced by any means involving the use of radar. Local authorities must set prima facie speed limits carefully, as justified by appropriate factors, to avoid making use of radar unavailable for speed enforcement.

When enforcing traffic laws by plain sight patrolling, officers should exercise their law enforcement discretion based on the same reasonable and prudent judgments as most other drivers, not influenced by prima facie speed zones which are not justified.

[2b] The survey in this case did not justify the prima facie speed limit. Enforcement involved the use of radar. Thus, a speed trap existed. The officer was therefore not competent as a witness and the court was without jurisdiction to render the judgment of conviction.

The judgment is reversed, and the case is remanded to the municipal court with directions to dismiss.

McNally, J., and Steele, J., concurred. [13 Cal.App.4th Supp. 16]

TRAFFIC MANUAL CHAPTER 8 - REGULATIONS Speed Limits and Zones 8-03 * * *

8-03.3 Establishment of Prima Facie ... Speed Zones

A. Legal Authority * * *

7. Speed Trap - Section 40802(b) provides that prima facie speed limits established under Sections 22352(b)(1), 22354, 22357, 22558 and 22358.3 may not be enforced by radar unless the speed limit has been justified by an engineering and traffic survey within the last five years.

An "Engineering and Traffic Survey" is required where enforcement involves the use of radar or other electronic speed measuring devices, under CVC 40802(b). Local streets and roads, as defined in the second paragraph of CVC 40802(b), primarily serving abutting residential property, are exempt from this requirement

B. Engineering and Traffic Surveys

Section 627 of the Vehicle code defines the term "Engineering and Traffic Survey" and lists requirements therefor. Following are two methods of conducting engineering and traffic surveys to be used to establish or justify prima facie speed limits. These methods are presented as required by the Vehicle Code.

1. State Highways - The engineering and traffic survey for State highways is made under the direction of the District Traffic Engineer. The data shall include:

a. One copy of the Standard Speed Zone Survey Sheet showing:

- . A north arrow.
 - . Engineer's station or post mileage.
 - . Limits of the proposed zones.
 - . Appropriate notations showing type of roadside development, such as "scattered business", "solid residential", etc. Schools adjacent to the highway should be shown, but other buildings need not be plotted unless they are a factor in the speed recommendation or the point of termination of a speed zone.
 - . Accident rates for the zones involved.
 - . Average daily traffic volume.
 - . Location of traffic signals, signs and markings.
 - . If the highway is divided, the limits of zones for each direction of travel.
 - . Plotted 85 percentile and pace speeds at location taken showing speed profile.
- b. A report to the District Director shall:
- . State the reason for the initiation of speed zone survey.
 - . Give recommendations and reasons therefor.
 - . List the enforcement jurisdictions involved and the attitude of these officials.

. Give the stationing or mileage at the beginning and at the end of each proposed zone and any intermediate equations. Ties must be given to readily identifiable physical features.

In determining the speed limit which is most appropriate to facilitate the orderly movement of traffic and is reasonable and safe, important factors are prevailing speeds, unexpected conditions, and accident records. **[13 Cal.App.4th Supp. 17]**

Speed limits should be established preferably at or near the 85 percentile speed, which is defined as that speed at or below which 85 percent of the traffic is moving. The 85 percentile is often referred to as critical speed. Pace speed is defined as the 10-mile increment of speed containing the largest number of vehicles. The lower limit of the pace is plotted on the Speed Zone Survey Sheets as an aid in determining the proper zone limits. Speed limits higher than the 85 percentile are not generally considered reasonable and safe and limits below the 85 percentile do not facilitate the orderly movement of traffic. Speed limits established on this basis conform to the consensus of those who drive highways as to what speed is reasonable and safe; and are not dependent on the judgment of one or a few individuals.

The basic speed law states that no person shall drive at a speed greater than is reasonable or prudent. The majority of drivers comply with this law, and disregard regulations which they consider unreasonable. It is only the top fringe of drivers that are inclined to be reckless and unreliable, or who have faulty judgment and must be controlled by enforcement. Speed limits set at or slightly below the 85 percentile speed provide law enforcement officers with a means of controlling the drivers who will not conform to what the majority considers reasonable and prudent.

Only when roadside development results in traffic conflicts and unusual conditions which are not readily apparent to drivers, are speed limits somewhat below the 85 percentile warranted.

Concurrence and support of enforcement officials are necessary for the successful operation of a restricted speed zone.

Section 22358.5 of the Vehicle Code states that it is the intent of the Legislature that physical conditions such as width, curvature, grade and surface conditions, or any other condition readily apparent to the driver, in the absence of other factors, would not require special downward speed zoning.

Speed zones of less than half a mile and short transition zones should be avoided.

2. City and County Through Highways, Arterials, Collector Roads and Local Streets.

a. Introduction - This is a short method of speed zoning based on the premise that a reasonable speed limit is one that conforms to the actual behavior of the majority of motorists, and that by measuring motorists' speeds, one will be able to select a speed limit

that is both reasonable and effective. Other factors that need to be considered are the most recent two year accident record, roadway design speed, safe stopping sight distance, superelevation, shoulder conditions, profile conditions, intersection spacing and offsets, commercial driveway characteristics, pedestrian traffic in the roadway without sidewalks, etc. In most situations, the short form will be adequate, but the procedure used on State highways may be used at the option of the agency.

b. Determination of Existing Speed Limits - These speeds will either be verified, increased or decreased depending on the results of the investigation. Specific types of vehicles may be tallied by use of letter symbols in appropriate squares.

The speed limit normally should be established at the first five mile per hour increment below the 85 percentile speed. However, in matching existing conditions with the traffic safety needs of the community, engineering judgment may indicate the need for a further reduction of five miles per hour. The facts justifying such a further reduction are the same factors mentioned above. Whenever such factors are considered to establish the speed limit, they should be documented on the speed zone survey or the accompanying engineering report.

The Engineering and Traffic Survey should contain sufficient information to document that the conditions of CVC Section 627 have been complied with and that other conditions not readily apparent to a motorist are properly identified.

The establishment of a speed limit of more than 5 miles per hour below the 85 percentile (critical) speed should be done with great care as this may make violators of a disproportionate number of the reasonable majority of drivers. **[13 Cal.App.4th Supp. 18]**

c. Speed Zone Survey -

. The intent of the speed measurements [is] to determine the actual speed of the unimpeded traffic. The speed of traffic should not be altered by concentrated law enforcement, or other means, just prior to, or while taking the speed measurements.

. Only one person is required for the field work. Speeds can be read directly from a radar meter.

. Devices, other than radar, capable of accurately distinguishing and measuring the unimpeded speed of free flowing vehicles unaffected by platoon movement may be used. Special application of devices other than radar are particularly appropriate on low volume facilities.

. A location should be selected where prevailing speeds are representative of the entire speed zone section. If speeds vary on a given route, more than one speed zone section may be required, with separate measurements for each section. Locations for

measurements should be chosen so as to minimize the effects of traffic signals or stop signs.

. Speed measurements should be taken during off-peak hours on weekdays. If there is difficulty in obtaining the desired quality, speed measurements may be taken during any period with free flowing traffic. The weather should be fair with no unusual conditions prevailing. It is important that the surveyor and his equipment be so inconspicuous as not to affect the traffic speeds. For this reason an unmarked car is recommended, with radar speed meter located as inconspicuously as possible. It should be placed so as to be able to survey traffic in both directions, and should not make an angle greater than 15 degrees with the roadway centerline.

. In order for the sample to be representative of the actual traffic flow, it is desirable to have a minimum sample of 100 vehicles in each survey. In no case should the sample for any survey contain less than 50 vehicles.

. Short speed zones of less than half a mile should be avoided, except in transition areas.

. Speed zone changes should be coordinated with changes in roadway conditions or roadside development.

. Speed zoning should be in 10 mile per hour increments except in urban areas where 5 mile per hour increments are preferable.

. Speed zoning should be coordinated with adjacent jurisdictions.

[Figures omitted.] FN 1. "No person shall drive a vehicle upon a highway at a speed greater than is reasonable or prudent having due regard for weather, visibility, the traffic on, and the surface and width of, the highway, and in no event at a speed which endangers the safety of persons or property." (§ 22350.)

FN 2. Unless otherwise indicated, all section references are to the Vehicle Code.

FN 3. The abbreviation "mph" will often be used herein in place of "miles per hour."

FN 4. Since 95 percent of drivers exceeded the prima facie speed limit, it is evident that the excellent safety record on that segment of the roadway was not the result of any reduced speed limit, but was the result of the road conditions and safe driving uninfluenced by the low speed limit.

FN 5. Calculating speed of a vehicle by timing it over a measured distance is defined as a "speed trap" by section 40802, subdivision (a). Enforcement is provided by sections 40801, 40803, subdivision (a), 40804, subdivision (a), and 40805.

FN 6. The uniform and vehicle requirements are specified in section 40800, with enforcement provided by section 40804, subdivision (b).

FN 7. If radar is used in conjunction with a prima facie speed limit, the prima facie speed limit must be justified as required by the statute even if the driver is charged with violation of the 55 mph maximum speed limit under section 22349 and is not charged with violation of the prima facie speed limit. (People v. Flaxman (1977) 74 Cal.App.3d Supp. 16, 18- 19 [141 Cal.Rptr. 799].)

FN 8. It would be helpful to have legislation clarifying whether section 40802, subdivision (b)'s reference to a "section of a highway with a prima facie speed limit provided by this code" includes speed limits:

1. Set by section 22352, subdivision (a) at 15 mph at railway grade crossings with obstructed views, intersections with obstructed views, and alleys;
2. Set by section 22352, subdivision (b) at 25 mph in a business or residence district, when passing a school while children are going or coming during school hours, and when passing a posted senior center;
3. Increased pursuant to section 22357;
4. Made variable for a freeway pursuant to section 22355;
5. Set pursuant to section 22357.1 at 25 mph adjacent to a children's playground in a public park during particular hours; or
6. Reduced to 20 or 15 mph near a school or senior center, pursuant to section 22358.4.

FN 9. "No peace officer or other person shall use a speed trap in arresting, or participating or assisting in the arrest of, any person for any alleged violation of this code nor shall any speed trap be used in securing evidence as to the speed of any vehicle for the purpose of an arrest or prosecution under this code." (§ 40801.)

FN 10. "A speed trap is either of the following:

"(a) A particular section of a highway measured as to distance and with boundaries marked, designated, or otherwise determined in order that the speed of a vehicle may be calculated by securing the time it takes the vehicle to travel the known distance.

"(b) A particular section of a highway with a prima facie speed limit provided by this code or by local ordinance pursuant to paragraph (1) of subdivision (b) of Section 22352, or established pursuant to Section 22354, 22357, 22358, or 22358.3, which speed limit is not justified by an engineering and traffic survey conducted within five years prior to the date of the alleged violation, and where enforcement involves the use of radar or other electronic devices which measure the speed of moving objects. This subdivision does not apply to local streets and roads.

"For purposes of this section, local streets and roads shall be defined by the latest functional usage and federal-aid system maps as submitted to the Federal Highway Administration. When these maps have not been submitted, the following definition shall be used: A local street or road primarily provides access to abutting residential property and shall meet the following three conditions:

"(1) Roadway width of not more than 40 feet.

"(2) Not more than one-half mile of uninterrupted length. Interruptions shall include official traffic control devices as defined in Section 445.

"(3) Not more than one traffic lane in each direction." (§ 40802.)

FN 11. "(a) No evidence as to the speed of a vehicle upon a highway shall be admitted in any court upon the trial of any person for an alleged violation of this code when the evidence is based upon or obtained from or by the maintenance or use of a speedtrap.

"(b) In any prosecution under this code of a charge involving the speed of a vehicle, where enforcement involves the use of radar or other electronic devices which measure the speed of moving objects, the prosecution shall establish, as part of its prima facie case, that the evidence or testimony presented is not based upon a speedtrap as defined in subdivision (b) of Section 40802.

"(c) When a traffic and engineering survey is required pursuant to subdivision (b) of Section 40802, evidence that a traffic and engineering survey has been conducted within five years of the date of the alleged violation or evidence that the offense was committed on a local street or road as defined in subdivision (b) of Section 40802 shall constitute a prima facie case that the evidence or testimony is not based upon a speedtrap as defined in subdivision (b) of Section 40802." (§ 40803.)

Note: Section 40803 has since been amended by Statutes 1992, chapter 538, section 1, effective January 1, 1993.

FN 12. "(a) In any prosecution under this code upon a charge involving the speed of a vehicle, any officer or other person shall be incompetent as a witness if the testimony is based upon or obtained from or by the maintenance or use of a speed trap.

"(b) Every officer arresting, or participating or assisting in the arrest of, a person so charged while on duty for the exclusive or main purpose of enforcing the provision of Divisions 10 and 11 is incompetent as a witness if at the time of such arrest he was not wearing a distinctive uniform, or was using a motor vehicle not painted the distinctive color specifically by the commissioner.

"This section does not apply to an officer assigned exclusively to the duty of investigating and securing evidence in reference to any theft of a vehicle or failure of a person to stop in the event of an accident or violation of Section 23109 or in reference to

any felony charge or to any officer engaged in serving any warrant when the officer is not engaged in patrolling the highways for the purpose of enforcing the traffic laws." (§ 40804.)

FN 13. "Every court shall be without jurisdiction to render a judgment of conviction against any person for a violation of this code involving the speed of a vehicle if the court admits any evidence or testimony secured in violation of, or which is inadmissible under this article." (§ 40805.)

FN 14. *People v. Halopoff*, supra, 60 Cal.App.3d Supp. 1, and *People v. Sterritt*, supra, 65 Cal.App.3d Supp. 1, 6, footnote 4, held that to avoid the consequences of a speed trap finding, the prosecution must produce the engineering and traffic survey. The requirements of Halopoff and Sterritt were codified in 1981 as subdivision (b) of section 40803. That provision was interpreted and applied in *People v. Peterson*, supra, 181 Cal.App.3d Supp. 7.

FN 15. Subdivision (c) of section 40803 refers to a "traffic and engineering survey." Subdivision (b) of section 40802 and other sections refer to an "engineering and traffic survey." They obviously refer to the same thing, which we shall generally refer to as a survey.

FN 16. Appellant raises the issue whether the existence of the survey was sufficiently before the court. The officer testified to a survey, appellant produced two expert witnesses who testified to details of the same survey, and respondent has provided a certified copy of a survey which is obviously the same one relied on by the prosecution in trial and attacked by appellant at trial and on appeal. We elect to deal with the merits of the survey rather than remand for retrial merely to have the survey clearly identified in the record.

FN 17. "Whenever a local authority determines upon the basis of an engineering and traffic survey that the limit of 55 miles per hour is more than is reasonable or safe upon any portion of any street other than a state highway where the limit of 55 miles per hour is applicable, the local authority may by ordinance determine and declare a prima facie speed limit of 50, 45, 40, 35, 30, or 25 miles per hour, whichever is found most appropriate to facilitate the orderly movement of traffic and is reasonable and safe, which declared prima facie limit shall be effective when appropriate signs giving notice thereof are erected upon the street." (§ 22358.)

FN 18. "(a) 'Engineering and traffic survey', as used in this code, means a survey of highway and traffic conditions in accordance with methods determined by the Department of Transportation for use by the state and local authorities.

"(b) An engineering and traffic survey shall include, among other requirements deemed necessary by the department, consideration of all of the following:

"(1) Prevailing speeds as determined by traffic engineering measurements.

"(2) Accident records.

"(3) Highway, traffic, and roadside conditions not readily apparent to the driver." (§ 627.)

FN 19. "It is the intent of the Legislature that physical conditions such as width, curvature, grade and surface conditions, or any other condition readily apparent to a driver, in the absence of other factors, would not require special downward speed zoning, as the basic rule of Section 22350 is sufficient regulation as to such conditions." (§ 22358.5.)

FN 20. Review at trial or on appeal will tend to fall into patterns. Many speed limits will apparently be justified because, in accordance with the general rule, they are set at the 85th percentile speed or within 5 mph under that speed. Some speed limits may be justified because they are set five mph below the general rule, based on higher than expected accident rates or listed hidden hazards. Some speed limits may appear to be unjustified or questionable because:

1. The speed limit is set 10 or more mph under the 85th percentile speed;
2. The speed limit makes violators of a large percentage of drivers;
3. "Conditions" listed are not hidden hazards, that is, they are readily apparent to a driver;
4. There is no explanation how the conditions listed require the speed limit set; or
5. The accident rate is not higher than would be expected statistically.

FN 21. Sullivan involved only section 40803, subdivision (a) which excluded speed trap evidence in all Vehicle Code prosecutions, including driving under the influence of alcohol as alleged in that case, Sullivan, supra, 234 Cal.App.3d at page 63, held that "... section 40803, subdivision (a), can only be characterized as a rule of evidence." The court continued: "The Legislature could have selected other remedies or penalties for violation of section 40801, but it clearly opted for the exclusion of evidence." (Ibid.) That remedy was abrogated by Proposition 8. But the court stated: "Sections 40803, subdivision (b), 40804, and 40805, which apply only when a defendant is charged with an offense involving the speed of a vehicle, do not apply in this case." (Id., at p. 60.) Those sections do provide other remedies or penalties for violation of section 40801 besides exclusion of evidence. We doubt that Proposition 8 was intended to abrogate statutes making a person incompetent as a witness and limiting the jurisdiction of a court.



Superior Court of California County of Orange

North Justice Center
1275 N. Berkeley Avenue
Fullerton, CA 92832
(714) 773-4556

Phone:
Fax:

August 04, 2005

714-745-2676

Officer Dale
Fullerton PD

In Re: People vs. Perez, Rebecca Dolores
Case No. FL727253

The court having taken your matter under submission, having considered the evidence arguments and applicable law, the court now rules as follows. Please find attached the ruling by Pro Tem T. Watts.


C. Gonzalez
Court Clerk II

Mark @ 6330
MUTED at Supp
EST. 5/20/04

Trial is called. Defendant, though his attorney answers ready and stipulates that defendant is properly named and identified by the officer.

Witness Dale credibly testifies that he was and is employed as a police officer for the Fullerton Police Department in the County of Orange and the State of California.

He was on-duty, in uniform and astride his distinctively marked police motorcycle in the driveway of 737 North Euclid in the City of Fullerton on October 28th, 2004 at about 10:55 in the late morning, intent on monitoring traffic. In his hand, was a Lidar laser speed measuring device which he had checked at the beginning of his shift, periodically throughout the day, and at the end of his shift for operational accuracy.

That device had been currently calibrated, and officer Dale had been appropriately trained in both the 24 hour certification classes, an 8 hour laser class and extensive field experience in the use of the device.

That day, He saw the defendant's vehicle, southbound in the number two lane of Euclid traveling at a speed that Officer Dale thought to be roughly 50 MPH. He lifted his Lidar device into position and leveled the reticle on the heads up display squarely on the center of the defendants front bumper. As he found his desired mark, he confidently squeezed the trigger. The shot was true. At 183 feet away, the beam locked, giving up a reading of 53 miles per hour.

That stretch of street has been posted for a 35 MPH maximum speed limit which would preclude the officer from using this item electronic enforcement in the absence of the current, properly prepared traffic speed survey (Vehicle Code § 40802 /speedtrap evidence) which survey was offered and received as Peoples 1 over the objection of the Defendant. Ruling on that objection was reserved.

The survey, which appeared to be regularly conducted, found that speed of the vehicles in the 85th percentile over the course of the survey was 44.2 MPH

Defendant does not cross-examine or call witnesses but moves to strike the testimony of the officer, in its entirety, based on the three grounds appearing below. The matter was submitted; The parties agreed that the matter could be taken under submission for consideration of defendant's motion to strike testimony and ultimate judgement, based on the following::

1. Failure of the officer to show *written* evidence of his training and/or certification. This showing is not required under Vehicle Code §40802(2)(a); overruled.
2. The failure of the officer to show *written* evidence of the inspection and certification of the Lidar unit. This showing is not required under Vehicle Code §40802(D) ; overruled.
3. The failure to show justification for the downward adjustment of more than 5 miles per hours as discussed in *People v. Goulet* 1992, 13 Cal App 4th Supp 17.

This presents a unique issue. *Goulet* was decided under principals laid down under the traffic survey rules in effect in 1992 which allowed up to and including a 5 mile downward deviation without specific justification contained in the body of the report citing conditions that are not apparent to drivers. Whether a downward deviation was justified under the old standards is not relevant here.

Beginning May 20, 2004, the California Department of Transportation has

adopted the Federal Highway Administration's (FHWA) Manual on Uniform Traffic Control Devices (MUTCD) 2003 as amended by the MUTCD 2003 California Supplement, to prescribe uniform standards and specifications for all official traffic control devices in California. This action was taken pursuant to the provisions of the California Vehicle Code Section 21400 and the recommendation of the California Traffic Control Devices Committee (CTCDC).

The MUTCD 2003 and the MUTCD 2003 California Supplement supersede and replace all the traffic control device topics (Chapters 4, 5, 6, 8, 10, 11, 12 and the traffic signals portion of chapter 9) in the 1996 Caltrans Traffic Manual, as amended, and all previous editions thereof.

Under MUTCD 2003 California Supplement, the new standards appear to presume that the nearest 5 MPH increment to the 85th percentile speed is presumed correct giving the engineer the latitude to reduce the speed limit an additional 5 MPH in order to allow for community concerns as set forth in the standard. (MUTCD 2003 California Supplement page 2B-51)

In my view this new standard *might* allow the traffic engineer a discretionary downward deviation of up to 9.9 MPH or 7.5 MPH or 5 MPH depending on how the manual is read.

Here are some examples:

1. A survey yielding the 85th percentile at 45 would require that the presumptive limit be determined as 45 mph with a discretionary downward deviation of 5 mph to a posted speed limit of 40 MPH.
2. A survey of 44.9 might be *lowered* to the nearest 5 MPH increment yielding a 40

MPH presumptive limit with the discretion to lower the limit to a posted 35.

3. If the 85th percentile were 43.6 and above, the presumptive limit would be 45 mph which could be reduced to a 40 MPH posted limit, but no further, in the absence of showing unapparent factors such as accident rates or hidden dangers.

Though the manual speaks of the improvidence of setting a speed limit in excess of the 85 percentile, it also addresses the improvidence of setting a lower limit. the precise words require the engineer to select the *nearest* increment.

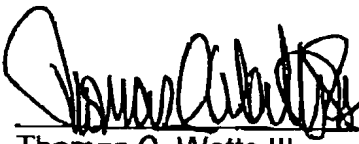
In the last paragraphs of the section(page 2b-53) it is written: "Speed limits are established at or near the 85th percentile speed..... Speed limits higher than the 85th percentile are not generally considered reasonable and prudent. Speed limits below the 85th percentile do not ordinarily facilitate the orderly movement of traffic and require constant enforcement to maintain compliance"

In this case, the subject traffic survey determined the 85th percentile speed for the subject stretch of Euclid as 44.2 mph. It is felt that the speed limit should have been fixed at a presumptive 45 MPH, then permissibly adjusted downward to a posted limit of 40 MPH.

This witness is well reputed amongst his peers and universally respected by judicial officers ,both temporary and franchised, for his personal integrity and professional disposition. He is known for his consistently objective testimony, free from any competitive design in favor of conviction. It is noted that in his citation, he lists his opinion of the prudent speed as being 40 mph suggesting to this writer that his experience might have trumped the findings of the traffic engineers for accuracy. There is no doubt that the defendant was factually traveling at 53 MPH which is 3 mph faster

than in the sample upon which the study was based. Nonetheless, the law is clear that in the absence of a proper speed study, the officer's evidence may not be considered. (Vehicle Code 40804) The survey is deficient under the new standards. Defendant's motion is sustained on the third ground and the evidence stricken

The Charge is dismissed

 8-04-05

Thomas C. Watts III
Temporary Judge